

This applies also for the second article on whether the European Union is “on the way to its Philadelphia” by Jean-Marie Ruiz. Nevertheless, Ruiz’s work is a very important comparison of the circumstances and the ideologies between the creation of the United States and what many hoped – and still do – would become the creation of a federal European Union. When Ruiz closes with the observation that “Federation now appears to Europeans as it once appeared to Americans as a solution to international dilemmas of the time,” he may have taken upon himself a greater mandate than what he actually had. When at least half of the people already inside the EU (not to mention the Europeans outside the Union) are critical if not even hostile to the idea of stronger federation, a more cautious comment would have perhaps been more appropriate.

And what about the “Americans” in Philadelphia? We may argue against Herbert Baxter Adams’ Germ theory and support Frederick Jackson Turner’s Frontier thesis, but the Founding fathers in Philadelphia were Europeans, or at least children of European immigrants. We can also argue endlessly about the impact the League of the Iroquois had on Benjamin Franklin’s ideas of a federation, but the fact remains that the political ideology behind the creation of the United States in 1787 was European.

Throughout *The Cultural Shuttle* the articles talk about the United States and Europe as if they were two totally different cultural and political concepts with interesting connections, and fail to see that, of course, the United States and its Americans are only another branch of the European tree. To me the United States has always been an interesting European adventure in a non-European environment. After reading *The Cultural Shuttle* it still is. The book actually confirms it.

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Herman Schwartz, *Right Wing Justice: The Conservative Campaign to Take over the Courts*. N.Y.: Nation Books, 2004. 328 pp. (index included); \$14.95.

Surveys show that Americans of mainstream political views mainly think about the judiciary when it issues a highly controversial decision such as outlawing school segregation, legalizing abortion, or overturning state sodomy laws – or when there is a vacant seat on the U.S. Supreme Court. Democrats have therefore generally viewed the judiciary as a non-sexxy nonstarter of an issue in American politics.

Not so Republicans, especially rightwing Republicans. They constantly think about remaking the courts, and the election of progressively more right-wing Republican presidents has served these conservatives well over the past forty years or so.

Presidents sit for 4, or if they are lucky, for 8 years. One of the best ways in which a president may make sure that his own political views will continue to hold power even after he is no longer in office, is to appoint federal judges who hold the same

views. Between them, Presidents Bush and Reagan managed to appoint about two-thirds of all federal judges between 1981 and 1992 – this is one major reason for the rightwing ideological and cultural turn in American life since Reagan. According to the Constitution, the president has the right to appoint justices. In the American system of checks and balances, these must then be approved by the Senate, which has the power to hold confirmation hearings. Sometimes these hearings become public displays, windows into the corridors of power. Some may remember the hearings in connection with the appointment of Clarence Thomas in the early 1990s by President George Bush. This appointment was a masterstroke on Bush's part: Thomas, a well-known conservative African American jurist, was to take the place of the first-ever African American man on the Court, Thurgood Marshall. Marshall was the one who argued the case of *Brown v. Board of Education of Topeka* in 1954 before the Court – the case in which the Court declared segregation in schools unconstitutional. This was the case that helped start the whole Civil Rights movement, and to replace Marshall with a staunch conservative, who had declared himself to be against abortion, for example, was a smart political move on the part of President Bush. It effectively split in two the various African American movements and organizations, and it got Bush a very conservative new force on the Court.

What makes the Court so extremely powerful is judicial review – the power to declare Acts of Congress unconstitutional (as in the *Brown* case). It does not say anywhere in the Constitution that the Court has this power; Chief Justice Marshall simply declared this to be the case in the famous case of *Marbury v. Madison* in 1803. From now on, it was the Court – and no longer Congress – that had the power to interpret the Supreme Law of the Land, that is, the Constitution. It took about a hundred years before the Court started becoming activist and using its power of judicial review, and it was only when Eisenhower appointed Earl Warren chief justice in 1953 that judicial review became a real tool in the political fight for a more just America. Warren was a Republican, and he was governor of California when he was appointed to the Court. Eisenhower later pronounced his decision to appoint Warren “the biggest damn fool mistake I ever made.” Warren, who had seemed safely conservative while active in politics, turned out to have a social conscience, and the Warren Court (1953-1969), under the chief justice's influence, became an important agency of social and political change in the 1960s.

Ever since, rightwing Republicans have not hesitated to attack liberal judges. It is interesting, for example, that the 101 southern members of Congress who signed the so-called “Southern Manifesto” (the protest against the *Brown* decision) denounced the Court's decision as “a clear abuse of judicial power.” In fact, the first paragraphs of the Manifesto are more about judicial abuse of power – courts taking over the power that political institutions ought to have – than they are about desegregation itself.

When William Rehnquist assumed the Chief Justiceship in 1986, the conservative judicial agenda was fairly well set. The goal was targeting liberal precedents in a host of fields. The conservative wish list included overturning *Roe v. Wade*, rolling back or

declaring unconstitutional affirmative action, relaxing constitutional limitations on police investigations, lowering the wall separating Church and State, increasing states' rights while cutting back on federal power, relaxing judicial oversight of the death penalty, and cutting back on the scope of civil rights laws.

The Rehnquist Court made substantial progress toward achieving most of these objectives. In fact, the rights of ordinary Americans are being steadily eroded as a result – or so argues Herman Schwartz in his *Right Wing Justice: The Conservative Campaign to Take Over the Courts*. Schwartz is professor at the Washington College of Law at American University. He is also the former chief counsel and staff director of the United States Senate Antitrust & Monopoly Subcommittee as well as a former member of the U.S. delegation to the UN Human Rights Commission and to the World Human Rights Conference. *Right Wing Justice* is not the first book he has written on the U.S. Supreme Court. Among his other books may be mentioned *Packing the Courts: The Conservative Campaign to Rewrite the Constitution* from 1988 and *The Struggle for Constitutional Justice in Post-Communist Europe from 2000*. Schwartz is the editor, furthermore, of *The Burger Years: Rights and Wrongs in the Supreme Court, 1969-86* (1987) and *The Rehnquist Court: Judicial Activism on the Right* (2002). As these titles suggest it is right-wing judicial activism that concerns him the most.

During the middle years of the 20th century, Schwartz argues in *Right Wing Justice*, three social revolutions took place: the New Deal, which established the principle that the federal government has a direct responsibility to care for those in need as well as to regulate and manage the economy; a social and cultural revolution highlighting the human rights movement and the change in women's roles; and, finally, a counterrevolution organized by the Right and targeted toward undoing the advances of the first two revolutions. Full control of the courts is a central goal or tool in this counterrevolution, and Schwartz tells the story of how successive Republican administrations and right wing think tanks have devised a whole strategy for "packing" the courts with right-wing judges who seem willing to take as their point of departure on the bench not the Constitution so much as their ideological identification with the Right.

"Even a cursory glance at American history shows that a powerful politically shaped and oriented judiciary is nothing new. It has roots deep in our history. Even in colonial times, courts were called upon to resolve serious disputes ...," Schwartz writes at the very beginning of the book (19). He accordingly devotes his first chapter to the period between 1787 and 1980. Chapter 2 is about the Reagan years, 1981-88 – the years during which the Right gained political power and started rolling back advances made in social justice and civil rights. In chapters 3 through 5, Schwartz talks about "George H.W. Bush's Judges, 1989-1992," "The Clinton Years, 1993-2000," and "George W. Bush's Judges," respectively. The picture he paints is not a pretty one; over the past fifty years, partisan, right-wing courts have done their best "to move the courts back toward the kind of judiciary that we had before 1937" (310). The result has been a steady erosion of the rights of ordinary Americans.

There are two exceptions. Within the areas of abortion and affirmative action right-wingers seem to have lost, says Schwartz. *Roe v. Wade* has not been overturned by the courts, and affirmative action has been preserved in higher education as well as in the private sector where many affirmative action programs are still in operation. However, even these two positive developments may turn out to be limited victories at best. "The Republican war cry is 'no more Souters' or liberals, and so long as George W. Bush or someone who shares his views is president, there won't be any" (*ibid.*) There will be retirements on the Court within Bush's second term as president. And one thing is certain: Bush will never make the mistake of appointing ideologically unreliable judges.

On this, Schwartz' prediction has come true. During his second term in office, Bush has been fortunate enough to be in a position to appoint two new justices to the Court. When Chief Justice Rehnquist died in the summer of 2005, Bush nominated and the Senate confirmed Judge John G. Roberts Jr. as new chief justice. And as the present review is going into print, we are waiting to see if the Senate will confirm Judge Samuel A. Alito Jr., the president's pick to fill the seat of retiring Justice Sandra Day O'Connor. O'Connor, who was the first woman on the Court, was nominated by Ronald Reagan, and over the years she has become the swing-vote. In terms of whether the Court will become more or less conservative in the future, it therefore matters very much who will succeed her.

In polls during the election year 2004, Americans identified issues such as health care, education, the war in Iraq, the economy, and unemployment as the top election issues. Democrats could – and in my opinion should – have driven home the point that the courts will have a great deal to say about how all of these issues play out. Unlike the Democrats, the Republicans were fully aware that the intellectual, legal, and political composition of the federal judiciary was one of the most important issues at stake in the 2004 presidential election, because the next president would have the power to create many new judges in his own image and thus place his stamp on every aspect of public policy for the next three decades.

It's the Judges, Stupid ...!

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Per Seyersted, *Robert Cantwell: An American 1930s Radical Writer and His Apostasy*. Introduction by Alan Wald. Oslo: Novus Press, 2004; xii + 345 pages. Sources, notes, index; ISBN 82-7099-397-2; NOK 384, € 48.

Thirty-five years separate Per Seyersted's groundbreaking 1969 critical biography of Kate Chopin and his last book, *Robert Cantwell: An American 1930s Radical Writer and His Apostasy*, published a short time before his death in April 2005. In both books Seyersted immersed himself in the life and work of a writer who had slipped below the horizon of literary recognition. Seyersted played a major role in bringing